84-1335

Office - Supreme Court, U.S.
FILED
FEB 19 1985
ALEXANDER L. STEVAS
CLERK

CASE NO.

in the

Supreme Court

of the

United States

OCTOBER TERM 1984

JACOB SHNURMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

JAMES R. COOK, Esq.
Counsel for Petitioners
323 E. 5th Street
Des Moines, Iowa 50309
(515) 243-5623

13 pp

QUESTIONS PRESENTED

I. THE APPELLATE COURT ERRED IN NOT REVERSING THE CONVICTIONS ON COUNTS II, IV & V FOR FAILURE OF PROOF OF IMPORTATION, SUCH FAILURE AMOUNTING TO DENIAL OF DUE PROCESS AND EQUAL PROTECTION OF LAWS.

II. THE TRIAL COURT'S INSTRUCTION ON EXTRINSIC EVIDENCE IS IN DIRECT CONFLICT AND OPPOSITION TO PRIOR DECISIONS IN THE FIFTH AND ELEVENTH CIRCUITS.

III. THE APPELLATE COURT ERRED IN CONDONING THE USE OF EXTRINSIC EVIDENCE BECAUSE OF ITS "STRIKING SIMILARITY" TO THE CHARGED OFFENSE, WITHOUT REQUIRING THE GOVERNMENT TO SPECIFY THE BASIS FOR INTRODUCTION OF SUCH EVIDENCE, WITHOUT PROPER FOUNDATION AND WITHOUT BALANCING THE NEED FOR SUCH EVIDENCE AGAINST THE INHERENT PREJUDICE. THIS HOLDING IS IN DIRECT CONFLICT WITH THE DECISIONS OF THE FIRST CIRCUIT COURT OF APPEALS IN U.S. vs. BOOTH, 673 F.2d 31 (CA1)(1982), U.S. vs. MIDDLETON, 673 F.2d 27 (CA1)(1982), and FEDERAL RULE OF CRIMINAL PROCEDURE 404(b).

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Citations	iv
Opinions Below	1
Jurisdiction	1
Statutes Involved	2
Statement of the Facts . . .	3
Reasons for Granting Writ . .	8

APPENDIX - TABLE OF CONTENTS

Appendix A:

Opinion of the Eleventh Circuit Court of Appeals . . App. 1

Appendix B:

Judgment of Court Below App. 45

Order Denying Petition for Rehearing . . . . . App. 46

Appendix C:

21 U.S.C. §841(a) . . . App. 48

21 U.S.C. §846 . . . . App. 48

21 U.S.C. §952(a) . . . App. 49

21 U.S.C. §960(1) . . . App. 49

Appendix - Table of Contents (continued)

Appendix D:

28 U.S.C. §1254(1) . . . App. 50

Appendix E:

Fifth Amendment to the United States Constitution . . . . . App. 50

TABLE OF CITATIONS

Case Authorities	Pages
Burton vs. United States 391 U.S. 123 (1968)	12
Pinkerton vs. United States 328 U.S. 649 (1946)	8
Furman vs. United States 720 F.2d 263 (CA2) (1983)	10
NLRB vs. Amalgamated Clothing Workers of America AFL-CIO 430 F.2d 966 (CA5)(1970)	10
United States vs. Beechum 582 F.2d 898 (CA5)(1978) cert. denied 440 U.S. 920 (1979)	11, 13
United States vs. Booth 673 F.2d 31 (CA1)(1982)	14
United States vs. Bussey 432 F.2d 1330 (DCC)(1970)	12
United States vs. Dothard 666 F.2d 498 (CA11)(1982)	13
United States vs. Edwards 696 F.2d 1277 (CA11)(1983)	11
United States vs. Goodwin 492 F.2d 1141 (CA5)(1974)	13
United States vs. Jiminez 613 F.2d 1371 (CA5)(1980)	12
United States vs. Krezdorn 639 F.2d 1327 (CA5)(1981)	14
United States vs. Mack 643 F.2d 1119 (CA5)(1981)	12

Table of Citations (continued)

Case Authorities	Pages
United States vs. Maslanka 501 F.2d 208 (CA5)(1974)	9, 11
United States vs. Messersmith 692 F.2d 1315 (CA11)(1982)	12
United States vs. Middleton 673 F.2d 27 (CA1)(1982)	14
United States vs. Myers 550 F.2d 1036 (CA5)(1977)	14
United States vs. O'Connor 580 F.2d 38 (CA2)(1978)	13
United States vs. Phillips 664 F.2d 971 (CA5)(1981), cert denied 457 U.S. 1136	9
United States vs. Smith 685 F.2d 1293 (CA11)(1982)	12
United States vs. Soto 591 F.2d 1091 (CA5)(1979)	9, 11
United States vs. Terebecki 692 F.2d 1345 (CA11)(1982)	11

Statutory Authorities	
18 U.S.C. §2	3
21 U.S.C. §841(1)	2, 3
21 U.S.C. §846	2, 3
21 U.S.C. §848	4
21 U.S.C. §952(a)	2, 3

Statutory Authorities (continued)

21 U.S.C. §960(1) 2, 3

28 U.S.C. §1254( ) 2, 1

Constitutional Authorities

Fifth Amendment to the United States Constitution 11

Other Authorities

Rule 17, Rules of United States Supreme Court 1

Federal Rule of Evidence 404(b) i, 15

The Petitioner herein, JACOB SHNURMAN, prays that a Writ of Certiorari issue to review the judgment and decision of the United States Court of Appeals for the Eleventh Circuit, entered in the above case on November 8, 1984.

OPINIONS BELOW

The opinion of the Court of Appeals, printed in Appendix A hereto, infra, (App. pages 1 through 44) was not published.

JURISDICTION

The judgment of the Court of Appeals was entered on November 8, 1984, Appendix B, infra, (App. page 45). A Petition for Rehearing was filed by the Defendant, and denied on the 21st day of Dec., 1984, Appendix B, infra, (App. page 46). The jursdiction of this Court is invoked under 28 U.S.C. §1254(1), Appendix D, infra, (App. page 50) and Rule 17, Rules of United States Supreme Court.

STATUTES INVOLVED

The Federal Statutory provisions involved are 21 U.S.C. §846, conspiracy to possess with intent to distribute marijuana; 21 U.S.C. §2163, conspiracy to import marijuana; 21 U.S.C.§841(1), distribution of marijuana; 21 U.S.C. §952(a) and 21 U.S.C.§960(1), knowingly and intentionally importing into the United States marijuana; and 21 U.S.C. §841(1), knowingly and intentionally possessing marijuana with the intent to distribute, and these statutes are set forth in Appendix C, infra, (App. page 48 through 49). The statutory authorization for appeals from final judgments of the Circuit Courts, 28 U.S.C.§1254(a), is set forth in Appendix D, infra (App. page 50).

STATEMENT OF THE FACTS

This appeal is of a conviction in a criminal case in the United States District Court for the Southern District of Florida, Honorable William M. Hoeveler, presiding Judge.

On November 9, 1979, the Grand Jury returned an indictment against 19 named Defendants, including Appellant Shnurman, alleging violations of 21 U.S.C. 846 conspiracy to possess with the intent to distribute marijuana, 21 U.S.C. §2163, conspiracy to import marijuana, 21 U.S.C. §841(1) and 18 U.S.C. 2, knowingly and intentionally distributing marijuana, 21 U.S.C. §952(a) and 21 U.S.C.§960(1), knowingly and intentionally importing into the United States marijuana, and 21 U.S.C.§841(a)(1), knowingly and intentionally possessing marijuana with the intent to distribute. A superceding indictment was returned on November 24, 1980, which indictment expanded the time

frame of Count VI of the indictment, 21 U.S.C.§848, continuing criminal enterprise, against defendants Reilly and Middleton to include October 20, 1980, thus including an arrest and seizure of some 21 tons of marijuana in Stonington, Maine. Defendant Shnurman was arrested in Stonington, Maine.

On November 14, 1979, an arrest warrant was issued for Shnurman. On January 18, 1980, a Writ of Habeas Corpus Ad Prosequendum was issued. On March 14, 1980, Shnurman posted a $100,000.00 appearance bond with the Court, however, he remained in state custody.

A Motion to Suppress and hearing on pre-trial motions was held before Magistrate Charlene Sorrentino, on May 5, 1980, to and including May 15, 1980. On June 6, 1980, the Magistrate filed her report.

On September 8, 1980, trial was commenced. On September 16, 1980, the trial was discontinued due to illness of one defense counsel and the Court

set the trial to resume January 12, 1981.

On October 20, 1980, approximately 10 of the Defendants, including Shnurman, were arrested by Federal authorities in Bangor, Maine.

On November 14, 1980, the government filed a Notice of Intent to use the Maine evidence against the Defendants. On November 24, 1980, the superceding indictment was issued by the Grand Jury.

On April 20, 1981, trial commenced. On June 3, 1981, Defendant Reilly was severed, and on June 10, 1981, the Court granted Defendant Middleton's motion for judgment of acquittal as to Count VI.

On June 19, 1981, all remaining defendants were convicted of all remaining Counts. Pre-sentence investigation reports were ordered by the Court. Defendant Shnurman was continued on bond.

On November 2, 1981, the defendants were sentenced. Shnurman was sentenced to imprisonment for two years on Counts

1-5, to run consecutively, for a total of ten years imprisonment, and was placed on a five-year special probation upon release from imprisonment.

Notice of this appeal was filed with the District Court on the 2nd day of November, 1981.

By order of the Eleventh Circuit the appeal of Jacob Shnurman was consolidated with Appeal #82-5300, U.S.A. vs. Robert Lawler, et al, involving seven co-defendants in the District Court proceedings.

On November 8, 1984, the United States Court of Appeals for the Eleventh Circuit issued an unpublished opinion which denied all points raised on appeal by the defendants.

On November 28, 1984, Shnurman filed a Petition for Rehearing with the Court of Appeals urging that the panel had failed to even address five (5) significant

allegations of error raised in his appeal brief and argument. On December 21, 1984, an Order denying the Petition for Rehearing, without comment or ruling, was entered by the panel.

REASONS FOR GRANTING THE WRIT

1. Appellant, at issue #4 of Appellant Jacob Shnurman's Brief, Brief pages 47-51, raised the issue of insufficiency of the evidence of Count II, Conspiracy to Import Marijuana, and Counts IV and V, substantive offenses alleged to be part of the conspiracy. Appellant Shnurman was in custody at the times Counts IV and V are alleged to have occurred so he was convicted on a theory of implied guilt. (Pinkerton vs. U.S., 328 U.S. 649, 1946)

The issue raised in the brief, and the Petition for Rehearing at pages 2-3, is that the government failed to produce any evidence whatsoever as to the origin of the marijuana seized at Crystal River, Florida. The evidence indicated that government agents seized a large supply of marijuana being off-loaded from the ship "Our Seas" by a number of people. The government offered no proof whatso-

ever that "Our Seas" had ever been outside U.S. territorial waters, or that the marijuana being offloaded had come from some "mother ship" outside the United States. In U.S. vs. Phillips, 664 F.2d 971, (CA5) (1981), cert denied 457 U.S. 1136, the 5th Circuit held that in order to prove importation (or conspiracy to import) the government has the burden to establish the essential element that the marijuana came "into the United States from any place outside thereof." See also U.S. vs. Soto, 591 F.2d 1091, (CA5) (1979); and U.S. vs. Maslanka, 501 F.2d 208, (CA5)(1974). In this case there is no direct proof of the origin of the boat, or the marijuana, sufficient to satisfy this element. The appellate Court in its decision, pages 8-11, discusses the elements necessary to establish a conspiracy but the decision is conspicuously silent on the element of importation. Even assuming, arguendo, that a conspiracy was

established, importation from outside the United States must also be shown. This point is critically important because if Count II (conspiracy) fails then implied guilt on the substantive counts (IV & V) must also fail. Certainly imprisonment on these charges for six years for Appellant makes this brief point sufficiently important to require the panel to address the issue in the opinion, and also on the application for rehearing. The failure of the appellate Court to address this issue amounts to a denial of due process and equal protection of laws. It is not the type of action condoned and explained in NLRB vs. Amalgamated Clothing Workers of America, AFL-CIO, 430 F.2d 966 (CA5)(1970) wherein the 5th Circuit explained and justified the use of summary disposition of appeals. See also Furman vs. U.S., 720 F.2d 263 (CA2)(1983). Here an opinion has been issued, no summary opinion was used, but the issue has not been addressed.

When convictions are reversed in Soto, supra, p. 1104, and Maslanka, supra, page 216, for just such a failure of proof, convicting and imprisoning appellant without such proof is a denial of appellant's constitutional rights under the Constitution of the United States, Amendment Five.

2. The Trial Court erred and gave instructions to the jury allowing the use of extrinsic evidence, an arrest in Maine in 1980 for an alleged conspiracy to distribute marijuana, on both Counts I & II. (Count VI, the CCE count against Middleton and Reilly is not pertinent in this appeal.) The appellate panel found no error whatsoever in the instruction (Appendix A, p. 24). This is in direct conflict with other decisions in the 5th and 11th Circuits. (U.S. vs. Beechum, 582 F.2d 898 (CA5)(1978) cert. denied 440 U.S. 920 (1979); U.S. vs. Edwards, 696 F.2d 1277, (CA11)(1982); U.S. vs. Terebecki, 692 F.2d 1345 (CA11)

(1982); U.S. vs. Messersmith, 692 F.2d 1315 (CA11)(1982); U.S. vs. Smith, 685 F.2d 1293 (CA11)(1982)). The Circuit has repeatedly held that the use of extrinsic, or "other crime", evidence must be narrowly and specifically used and the jury must be properly limited in the use of such evidence by appropriate limiting instructions. In U.S. vs. Jiminez, 613 F.2d 1371, (CA5) (1980) and U.S. vs. Mack, 643 F.2d 1119, (CA5)(1981), the 5th Circuit specifically recognized the need to limit prejudicial effect of such evidence through precise limiting instructions. The ruling of this panel will have the effect of overturning and reversing these decisions if allowed to stand. This panel's decision is also in direct opposition to the decision in U.S. vs. Bussey, 432 F.2d 1330, 1334 (DCC) (1970). The decision also would violate the holding in Bruton vs. U.S., 391 U.S. 123, 137 (1968).

3. The appellate panel allowed the use of the extrinsic evidence from Maine because of the "striking similarity" of the events at Crystal River and the arrests more than 3 years later in Stonington, Maine, to show "identity, motive, knowledge and intent." (Appendix A, page 23). In the appellants brief all of the possible bases for admission of extrinsic evidence were examined in light of case law in the 5th and 11th Circuits (Brief of Appellant Shnurman, pages 25-36). Appellant pointed out to the panel, in utmost detail, the need to identify the specific use for which the government offers the extrinsic evidence, the foundation necessary for such evidence and the balancing test necessary for admission of such evidence. (See U.S. vs. Beechum, supra, (Generally), U.S. vs. Goodwin, 492 F.2d 1141 (CA5) (1974), U.S. vs. Dothard, 666 F.2d 498, 502 (CA11)(1982), U.S. vs. O'Connor, 580 F.2d 38, 41-42 (CA2)(1978); (design,

scheme, plan or identity) U.S. vs. Myers, 550 F.2d 1036 (CA5)(1977)("Modus operandi"); U.S. vs. Krezdorn, 639 F.2d 1327 (CA5)(1981) (PLAN).

Despite repeated objection and requests by the defendants at trial the government was allowed to introduce extrinsic evidence from Maine which literally totalled thousand of pages in the trial transcript. The appellate panel approved this use because of the "striking similarity" between the purported conspiracies even though the First Circuit specifically addressed and rejected this contention in U.S. vs. Middleton, 673 F.2d 27 (CA1)(1982), and U.S. vs. Booth, 673 F.2d 31 (CA1)(1982), interlocutory appeals based on double jeopardy arising from the Maine incident. This point was raised to the appellate panel in the Petition for Rehearing but the issue was not addressed. This decision is in direct conflict with Booth, supra, Middleton, supra.

This decision also violates the basic tenet for introduction of extrinsic evidence (Federal Rule of Criminal Procedure 404(b)) in that convictions because of "similarity" of offenses is the very danger that 404(b) attempts to guard against.

4. The extrinsic evidence was only offered in connection with Count II and VI. If Count II fails for insufficiency of evidence then retrial on Counts I and III is mandated because of the prejudicial effect of the extrinsic evidence.

APPENDIX

APPENDIX A

No. 81-6121

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

vs.

JACOB SHNURMAN,

Defendant/Appellant.

No. 82-5300

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

vs.

ROBERT LAWLER, JEFF BROWN, LARRY LANCELOTTI, RANDALL COLLINS, CLIFTON RAY MIDDLETON, BRAD RUSH, and IRVING IMOBERSTAG,

Defendants/Appellants.

Appeals from the United States District Court for the Southern District of Florida (November 8, 1984)

Before HENDERSON and CLARK, Circuit Judges, and ATKINS*, District Judge.

ATKINS, District Judge:

*Honorable C. Clyde Atkins U.S. District Judge for the Southern District of Florida, sitting by designation.

The Appellants, along with 11 others, were indicted for conspiracy to possess with intent to distribute marijuana (Count I), conspiracy to import marijuana (Count II), distribution of marijuana (Count III), importation of marijuana (Count IV) and possession with intent to distribute marijuana (Count V), all in violation of 21 U.S.C. §841, 846, 852, 863 and 18 U.S.C. §2. In addition, Keith Gordon, Thomas Francis Reilly, Jr., and appellant Clifton Ray Middleton were charged with a continuing criminal enterprise (Count VI), in violation of 21 U.S.C. §848. After a mistrial because of the illness of appellant Middleton's lawyer, a superseding indictment was filed reflecting changes in the Count VI allegations. Except for a directed verdict of acquittal on the continuing criminal enterprise charge (Count VI) as to appellant Middleton, all eight appellants were convicted of all remaining counts. The appellants,

either jointly or separately, urge reversal because of (a) the insufficiency of evidence to support the convictions, (b) denial of a fair trial, (c) constitutional violation of the right to speedy trial, (d) abuse of discretion in the granting of in one instance and denial in another of a severance, (e) refusal to recognize a religious use of marijuana, and (f) ineffective assistance of counsel. Finding no error, we affirm.

The Factual Setting

The government's evidence at trial revealed an on-going conspiracy to import and distribute marijuana, carried on by the named appellants, all but two of whom were members of the "Ethiopian Zion Coptic Church."

Most of the appellants used fictitious names. Most of the property, motor vessels and motor vehicles were purchased in fictitious names, and at least one bus was registered to the

"church" itself. The boats were viewed by and negotiated for by many of the appellants. A number of the appellants used interchangeable addresses of Star Island, in Miami Beach, Florida, Inverness (Dunnellon), 6724 Coral Way and Michael Booth's home in Coral Gables, Florida. The "church" papers were signed with fictitious names, using the 6724 Coral Way address.

The Jamaican Seizure

In 1976, Michael Booth, Jeffrey Brown, William Reid, Bradford Eldo Rush, Sheldon Woodward and Bradford Eldo were in Jamaica aboard the "Peter's Boat" which was towing the motor vessel "Zion," the latter containing marijuana. The "Peter's Boat" had been purchased by Clifton Ray Middleton (using the name Peter Sheets), Bradford Eldo Rush and others.

In January of 1977, the large motor vessel "Erin," loaded with marijuana, was seized by Jamaican Coast Guard. The next month, Keith Gordon and Thomas Francis

Reilly, Jr. spoke with Jamaican Defense Force officers Paul Aarons and David Hall about paying the officers a sum of money in exchange for their giving information to Reilly and Gordon to protect shipments of marijuana from Jamaica to the United States. Gordon and Reilly requested the return of the "Erin" and the "great white ship" ("Peter's Boat"). Reilly and Gordon gave Aarons and Hall $2,200 in Jamaican currency, (GX 50) for some information. However, after a raid and seizure of marijuana had taken place on St. Ann's Parish, which was "Coptic Church" property, Gordon and Reilly told the Jamaican officials that they would not pay any more money.

Mercer County, New Jersey

In July of 1977, appellant Lawler and William Reid were caught in New Jersey in a van which carried a steel water tank in which marijuana had been concealed. There was also a bag of marijuana in plain view.

During that same month, and continuing for a month or so thereafter, Peter Hill, a Jamaican working with the government, was negotiating to import into the United States a fire truck with marijuana in its water tanks. The negotiations were with Reilly and Gordon, and Gordon was to provide the marijuana. Peter Hill subsequently came to the United States and introduced Les Thompson, a Special Agent with the Drug Enforcement Administration (DEA), to Keith Gordon and Thomas Reilly at the Star Island mansion. Thompson was introduced as part owner of the fire truck shipment. However, this truck was seized on the dock in Jamaica with 1500 lbs of marijuana in its water tanks. Reilly and Gordon negotiated further with Thompson (two other agents were also present on one occasion) for the sale of marijuana. The deal was never completed because the "Coptics" had by that time suffered several losses, and Thompson could not

obtain DEA approval for the expenditure of the necessary $10,000.

Dunnellon, Florida

In November of 1977, an informant gave officers of the Florida Department of Law Enforcement (FDLE) information that led them to some property in Dunnellon, Florida. Armed with the information and having personally smelled the odor of marijuana from the perimeters of the land, FDLE officers obtained a search warrant. Two tracts of land were enclosed within one fence and a mobile trailer home was on one tract. The officers found Carl Swanson loading or unloading a truck with marijuana and found marijuana on the ground near the truck and the mobile homes and in the mobile home, and also found 14½ tons of it in tunnel that had been excavated under several barns; the tunnels were covered by trap doors. The officers also observed several school buses without seats, with windows painted black, at least

one of which had a sign reading "Zion Coptic Church"; they also found other motor vehicles. Two of the buses were registered in the name of George Bennington, an alias for the appellant Jacob Shnurman. A truck in the name of Peter McFarland, an alias for the appellant Imoberstag, was also seen.

After arriving at the property and announcing themselves preliminary to execution of the search warrant, the state police saw several people "scatter" and immediately thereafter saw someone jump over a fence. Within seconds Larry Lancelotti was picked up walking at just about that same location, but on the outside of the fence. Inside the mobile home they found Irving Imoberstag, whose truck was parked across the way on a piece of property which he had purchased in another name. The title to the truck was held in another name. Anne Mary Morrison and William Reid were also found in the trailer, along with another female and a baby. A

trash compactor, used to compact marijuana for packaging, and additional marijuana were also found in the trailer. The trailer belonged to Clifton Ray Middleton, purchased in the name of Peter Sheets. The adjoining enclosed property belonged to Thomas Francis Reilly, purchased in the name of Ronald J. Sims.

Crystal River, Florida

In February of 1978, United States Coast Guardsmen spotted some suspicious activity on the banks of the Florida Barge Canal. After notifying local police agencies, the Coast Guardsmen set up surveillance. They observed many different vehicles, including several trucks, backed up to the water. The Coast Guardsmen also observed different vehicles making contact with each other and heard C.B. transmission, but were unable to understand the words being transmitted. They heard, and subsequently saw, a large boat, running without lights, come into the area and turn around.

After seeing lights blink and hearing sounds for a period of time, the state officers identified themselves; they heard people running and saw people "scattering."

They found that the large boat "Our Seas" was tied up to a smaller boat; marijuana was being taken from the larger boat to the smaller boat, to the land, and then to the trucks. All of the trucks and cars at the scene had C.B. radios. There were nine motor vehicles and two vessels in all. When warning shots were fired, some people dropped to the ground and some kept running into the marsh and the woods toward the roadway.

Robert Lawler was hiding about 150 yards from the boat. Reginald Toney was trying to hide in the grass a little further away; he admitted arriving on the boat. Jacob Shnurman (who used the name Melvin Isaac Emanuel) was found hiding in a bus that was loaded with marijuana and Michael Cullison was found hiding under

that same bus. Jeffrey Brown was taken out of the water. Larry Lancelotti, who used a fictitious name, and Bradford Eldo Rush were seen being picked up by a truck on the side of the road; Rush's fingerprints were found on the boat. Randall Collins was found walking where the woods and roadway met; he also told the officer that his car had broken down; however, no one had seen nor could they find the described car.

Michael Booth, still wet and muddy, was seen going into a motel room of the closest motel to the barge canal; his fingerprint was on a Bible found on the "Our Seas." In that motel room was Nathan Chapman, who gave a fictituious name. Fingerprints of Clifton Ray Middleton were also found on a manual on the "Our Seas." No other fingerprints were found.

Most of the appellants were wet and muddy; some of them smelled of smoke (because they had had to build fires to stay in the woods overnight). All of the

male appellants had long hair and beards (with the exception of Reginald Toney who said he was not a "Coptic"); they claimed to be members of the "Ethiopian Zion Coptic Church."

The 345-Pound Scale

In July of 1978, a man by the name of Lee Dunn met with Tony Darwin and Carl Swanson to buy marijuana. Dunn was directed to the Star Island mansion belonging to the "Coptic Church," where he met Reilly. He purchased 345 pounds of marijuana, which was delivered to him by Chapman. Through these negotiations, Dunn also met a man called "Ernie," whom Dunn later identified as Clifton Ray Middleton. No evidence of the contraband was introduced.

The Airplane Crash

In September of 1979, there was an airplane crash in Fort Lauderdale. The body of Carl Swanson was found in the co-pilot's seat and the plane contained

2,000 pounds of marijuana. The pilot of the airplane has escaped. A Jamaican newspaper dated September 30, 1979, was found on board the airplane which crashed on that same date. The airplane had been purchased by Tony Darwin, using a fictitious name, and had been placed in a fictitious corporation.

The Maine Incident

After the mistrial in September of 1980, another seizure of boats and marijuana occurred in October, 1980, in Bangor, Maine. All of the appellants arrested in Stonington, Maine were identical to the Crystal River (Barge Canal) seizure. The contents of the boat was off-loaded into waiting trucks; people "scattered" and hid upon discovery. All persons were members of the same "church"; all men had long hair and beards. Shnurman was pulled out of the water, Larry Lancelotti was found by the water; Middleton was hiding in bushes; Booth was found in thick

underbrush. Brown, Collins and Rush were on the boat that had been purchased by Rush, using a fictitious name. Lawler was seen on the docks; Imoberstag was found in the immediate area. The boat came in without lights, but then flashed its lights as had the "Our Seas." It tried to escape, as had the "Peter's Boat" in Jamaica. This event was introduced as extrinsic offense evidence, but, because of the prosecution in Maine, the appellants were not charged with this substantive offense in the Southern District of Florida, except as a predicate act under the Continuing Criminal Enterprises count.

I. The Evidence Supports the Convictions

In reviewing the sufficiency of the evidence, this Court must view that evidence in the light most favorable to the Government. Glasser vs. United States, 315 U.S. 60, 80 (1942); United States vs.

Thomas, 676 F.2d 531, 535 (11th Cir. 1982). All reasonable inferences and credibility choices must be drawn in favor of the verdict. Hamling vs. United States, 418 U.S. 87, 124, (1974); United States vs. Gianni, 678 F.2d 956, 959 (11th Cir. 1982).

Our review is limited to a determination of whether a reasonable trier of fact could have found that the evidence established guilt beyond a reasonable doubt. United States vs. Vera, 701 F.2d 1349, 1357 (11th Cir. 1983). The government must demonstrate, to establish the offense of conspiracy, that an agreement existed between two ormore persons to commit a crime and that a defendant knowingly and voluntarily joined or participated in the illegal venture. United States vs. Vera, 701 F.2d 1349 (11th Cir. 1983). The existence of an agreement may be provied by circumstantial evidence, such as inferences from the conduct of the alleged participants or from circum-

stantial evidence of a scheme. United States vs. Tamargo, 672 F.2d 887 (11th Cir. 1982). The requirement of knowledge of the conspirators' agreement refers merely to knowledge of the essential objective of the conspiracy. United States vs. Badolato, 701 F.2d 915 (11th Cir. 1983). Finally, a defendant "may be found guilty of conspiracy even if he did not join the conspiracy until after its inception . . . and even if he plays only a minor role in the total scheme." United States vs. Tamargo, 672 F.2d at 889.

We find that the evidence supports a finding that a reasonable trier of fact could have found appellants guilty beyond a reasonable doubt. The acts of each appellant was such that the jury could have reasonably inferred from them the requisite intent to adopt or join the common goal for purpose of an overall conspiracy. All of the appellants claimed to be members of the "Ethiopian Zion Coptic

Church."[1] Everyone connected with the "church" used fictitious names--even on the "church" incorporation papers. Vehicles, motor vessels and property were purchased in fictitious names for use by the "church" and its members. Moreover, the members used alternative and interchangeable addresses. The evidence supports the inference that the reason for such subterfuge was so that the "church" members could cover their illegal activities. These included the large scale and continuing conspiracies to import, possess and distribute marijuana, while claiming the substance to be merely an ancillary part of their "religious practices." In 1977, Gordon, in the presence of Reilly and with his assistance, outlined the whole marijuana smuggling scheme to the Jamaican officers.

---

1. The Ethiopian Zion Coptic Church was incorporated first in Jamaica and then in the United States, for tax purposes.

The series of incidents proved at trial revealed a continuing effort on the part of those involved to carry on the smuggling and distribution activities. Each appellant was identified and connected with one or more of the instances--including the Maine incident.

We have carefully reviewed the evidence as set forth above. It shows a series of incidents demonstrating a continuing effort to carry on smuggling and distribution activies. Each appellant was identified and connected with one or more of the instances from Jamaica to Maine. Their conduct dispels any credible argument that they were "merely present" in the area when the raids occurred.

Appellant Middleton assails the quality of the evidence regarding the 345 pound sale of marijuana (Count III) insofar as it related to him. Testimony of the accomplice Dunn, if believed by the

jury, was sufficient to support Middleton's conviction. United States vs. Raffone, 693 F.2d 1343, 1345 (11th Cir. 1982).

The challeges of the appellants are not supported by the record. We hold there was sufficient evidence to support the verdicts.

II. The Trial was Fundamentally Fair as to All Appellants

The Appellants cite eight errors, the cumulative effect of which, they argue, compel reversal because their trial was not fair. The test is not whether the trial was perfect but was it fundamentally fair. United States vs. Johnson, 713 F.2d 633, 654 (11th Cir. 1983); United States vs. Blasco, 702 F.2d 1315, 1329 (11th Cir. 1982). We hold the appellants received a fundamentally fair trial.

A. The Admission of Evidence Under Federal Rule of Evidence 404(b)

Of eight trial rulings assailed by the Appellants, they devote the greatest

portion of their briefs to the evidence admitted under Fed. R. Evid. 404(b).

The indictment charged that motor vessels, automobiles, and property had been purchased in fictitious names pursuant to the conspiracy. The indictment alleged that the Jamaican events had transpired as part of the overt acts in furtherance of the conspiracy, including the possession of marijuana and the attempts to bribe Jamaican officials. The indictment charged that the "church" members would use its tax exempt status to further the conspiracy. The indictment also alleged the Dunnellon and Crystal River events as overt acts in furtherance of the conspiracy.

Thus, the only extrinsic offense introduced concerned the events culminating in the arrests in Maine in October, 1980. Nevertheless, that event was part of the overall continuing criminal enterprise charge in Count VI, and was properly

admitted against Reilly and Middleton for that count.

Appellants urge that the court should have held a "pre-submission hearing." Even if this is correct, the failure to require the government to present the extrinsic act witnesses to the judge was not error. Cf., United States v. Bent, 707 F.2d 1190, 1194 (11th Cir. 1983) (failure to hold separate James hearing on admissibility of co-conspirator statements not an abuse of discretion); United States vs. Miller, 664 F.2d 826, 827-828 (11th Cir. 1981). (separate James hearing unnecessary).

The Teaching of Beechum

United States vs. Beechum, 582 F.2d 898 (5th Cir. 1978) (en banc), cert. denied, 440 U.S. 920 (1979) sets the parameters for the admission of evidence under Fed. R. Evid. 404(b).

As the Beechum court said:

> First, it must be determined that the extrinsic offense evi-

> dence is relevant to an issue other than the defendant's character. Second, the evidence must possess probative value that is not substantially outweighed by its undue prejudice and must meet the other requirements of Rule 403. Id. at 911.

The Maine evidence met the first step of the analysis: (1) it required the same intent as the offense charged (United States vs. Mitchell, 666 F.2d 1385, 1389 (11th Cir. 1982), cert. denied, 457 U.S. 1124 (1982), and (2) the jury could reasonably have concluded that the appellants comitted the Maine offense from the evidence at the trial.

The second step requires a balancing test under Fed. R. Evid. 403 besides two additional factors explicit in the cases: (1) the need for such evidence "to prove an essential element . . ." and (2) the time between "the extrinsic and charged offenses", United States vs. Beechum, 582 F.2d at 914 and 915.

The striking similarity between the

Maine and Crystal River crimes, the congruity of the individuals involved, the linkage between the two seizures and the commonality of the scheme, all militate in favor of the trial court's ruling admitting the challenged Maine evidence.

We hold that the Maine evidence was admissible to show identity, motive, knowledge and intent.

The Limiting Instructions

Prior to the testimony of the first witness regarding the Maine incident, the Court gave a "similar acts" limiting instruction as (far) as the allegations in Count II (conspiracy to import marijuana). Written copies of these instructions were distributed to the jury as agreed. In the final charge to the jury, the Court gave another "similar acts" instruction as to the allegations of Counts I and II, cautioning the jury as to the use of the extrinsic evidence. Appellants did not object to the giving

or the language of these charges.

We find no error in the giving or content of these instructions.

Other Alleged Trial Errors

We have carefully considered the other errors allegedly occurring in the course of the trial. We find none of these is cause for reversal.

III. The Fifth and Sixth Amendments Speedy Trial Claims

The appellant Shnurman and the other appellants assert both pre-indictment and post-indictment delay as grounds for violation of their speedy trial and due process rights. None of them asserts Speedy Trial Act violations.

Shnurman sought dismissal during the trial on the above grounds but did not again specifically urge dismissal at the close of th trial, "when prejudice can be better gauged." (United States vs. MacDonald, 435 U.S. 850, 859 (1978). Because failure of the trial court to review the

prior speedy trial motion, sua sponte, was not plain error, Shnurman has not properly preserved his objection. We nevertheless consider this claim.

A. Pre-indictment Delay

Preindictment delay constitutes a violation of the due procees rights if it can be shown: (1) that the appellants incurred actual substantial prejudice as result of the government's delays; and (2) that the prosecution intentionally employed the delay to gain a tactical advantage. United States vs. Marion, 404 U.S. 307, 325 (1971); United States vs. Radue, 707 F.2d 493, 495 (11th Cir. 1983). We hold the appellants have failed to satisfy either requirement of this test.

The appellants have not shown how they were substantially prejudiced by the delay. The federal authorities received this case in March of 1979 when the Governor of the State of Florida asked

the DEA to accept the investigation. The first indictment was returned in November of that same year. When consideration is given of the number of defendants and witnesses, the extent of investigative efforts and internal policies of the Department of Justice that had to be satisfied, this seven-month period was not unreasonable.

The evidence shows that the United States Coast Guard notified the local authorities of the suspicious activity and then was present during the raid; the local authorities, nevertheless, conducted the raid, handled the prisoners and indicted those involved. That was the extent of the federal involvement until March of 1979, when the Governor of the State of Florida made the above request. Even under the Speedy Trial Act, a state arrest does not trigger federal speedy trial time. United States vs. Phillips, 569 F.2d 1315, 1317 (5th Cir, 1979); United States vs. Carlson, 697 F.2d 231, 235 (8th Cir. 1983).

Shnurman was in state custody from April, 1979 through May 5, 1980, because of a state probation violation and/or because of the charges in Citrus County. Such proceedings did not involve federal charges. In addition, the mere fact of custody does not preclude a defendant from preparing an adequate defense. United States vs. Love, 692 F.2d 1147, 1152 (8th Cir. 1980). He was released from state custody in May of 1980, and the trial in this cause did not begin until April, 1981.

Appellant Shnurman's contention that he was prejudiced by the delay because Carl Swanson was killed and Stephen Burns (Chapman) became unavailable to him. Even assuming they would have testified, Shnurman made no proffer of their testimony and its assistance to him. See United States vs. Brand, 556 F.2d 1312, 1316-1317 (5th Cir. 1977), cert. denied, 434 U.S. 1063 (1978); United States vs. Rice, 550 F.2d 1364

1368-1369 (5th Cir. 1977), cert denied, 434 U.S. 954 (1977). As this circuit held in Rice:

> [s]peculative assertions, such as allegations of lost witnesses, ensuing indigency, failure of memory, and general inability to defend oneself due to the delay, fall short of the Marion standard. (Citations omitted) Id. at 1369.

The requirement that the defendant prove that the delay was both prejudicial and intentional reflects the courts' reluctance to interfere with the discretion surrounding the prosecutorial process. (See United States vs. Lovasco, 431 U.S. 783, 790 (1977).

We hold the appellants have failed to show how the lapse of the pre-indictment times inured to their prejudice. See United States vs. Brown, 667 F.2d 566, 568 (6th Cir. 1982).

B. Post-indictment Delay

Shnurman urges this court to dismiss the indictment against him on Sixth Amendment speedy trial grounds. In

determining whether his Sixth Amendment rights were violated, this court is bound by the balancing text of Barker vs. Wingo, 407 U.S. 514 (1972). Barker established a four-pronged test to be applied on an ad hoc basis in all cases in which a Sixth Amendment speedy trial claim is raised. The four factors to be considered are the length of delay, the reason for the delay, the defendant's assertion of his right and prejudice to the defendant. Barker vs. Wingo, 407 U.S. at 530-533.

There are other factors, implicit in Barker, to be weighed in the balance, including the number and complexity of legal and factual issues involved in a case and the availability of evidence. United States vs. Avalos, 541 F.2d 1100, 1110 (5th Cir. 1976), cert denied, 430 U.S. 970 (1977).

These four factors (1) length of delay, (2) the reason for the delay, (3) the defendant's assertion of his

rights, and (4) prejudice to the defendant, when examined, afford no support for Shnurman's contention.

1. Length of Delay. The original indictment was returned November 9, 1979. Trial was initially begun on September 8, 1980, but was terminated on September 16, 1980, because of the illness of a defense attorney. Trial recommenced on April 20, 1981. The post-indictment delay was thus 17 months. This lapse of time is sufficient to require an examination of the other factors. See United States vs. Avalos, 541 F.2d at 1111; Gravitt vs. United States, 523 F.2d 1211, 1214 (5th Cir. 1975). This 17-month delay, however, is not sufficient to warrant a finding that the appellants were denied their Sixth Amendment rights, inquiry into the other factors is required. United States vs. Carter, 602 F.2d 1204, 1207 (5th Cir. 1979). Furthermore, "a greater delay may be tolerated in pro-

secuting a complex conspiracy than in prosecuting an ordinary street crime." United States vs. Avalos, 541 F.2d at 1111.

2. Reasons for delay. In considering speedy trial claims, this circuit has recognized three classes of reasons for delay in bringing a defendant to trial.

(a) Deliberate delay. "A deliberate attempt to delay the trial in order to harper the defense should be weighed heavily against the government." Barker vs. Wingo, 407 U.S. at 531. The continuance granted to the governmnet on September 16, 1980, was due to the illness of a defense counsel. Judicial economy dictated against severance.

(b) Negligent delay. The second class of reasons for a post-indictment delay involves more "neutral" reasons, such as negligence or overcrowded court calendars. A delay attributable to reasons of this class should be weighed less heavily, but nevertheless should be con-

sidered since the ultimate responsibility for such circumstances must rest with the government, rather than the defendant. Barker vs. Wingo, 407 U.S. at 531.

This case began with 13 arrested defendants. The trial was projected to last in excess of two months. Thus, the court and 12 to 13 lawyers had to find a long period of time in their schedules which coincided. Meanwhile, the Assistant United States Attorney was ready at all times to proceed with the trial. In United States vs. Bloom, 538 F.2d 704 (5th Cir. 1976), cert. denied, 429 U.S. 1074 (1977), the court observed:

> Without detailing all the causes for delay in the present litigation, it suffices to note that the case was a complex one originally involving several defendants. The multiplicity of defendants and the problems of coordinating the schedules of their lawyers made it difficult to set trial dates. Substantial portions of the delay in bringing this case to trial are attributable to the defendant and to the congested criminal docket in the

Southern District of Texas.
Id. at 711.

Thus, the scheduling of the judges' duties around the crowded docket can be labeled a "neutral reason," to be slightly weighed against the government. However, the inability of the defense attorneys to coordinate their schedules is a totally excusable delay.

(c) Justified delay. Finally, almost all of the delay was attributable to this third class of reasons. "[A] valid reason . . . should serve to justify appropriate delay." Barker vs. Wingo, 407 U.S. at 531.

On December 8, 1979 the first pretrial motion was filed. Not only were 13 separate defendants filing motions, but most of them adopted the motions made by their co-defendants. Many of these motions required hearings, while all of them required court (magistrate) consideration, and often reconsideration (district Judge)

upon motion of defendants. Hence, from December 8, 1979 to September 3, 1980, the court was faced with numerous motions which required disposition. Even under the Speedy Trial Act, 18 U.S.C. §3161(h)(7), the delay caused by one defendants is excusable as to the co-defendants. This rule extends to delay caused by the filing of pretrial motions. United States vs. Stafford, 697 F.2d 1368, 1372 (11th Cir. 1983). Thus, much of the delay between the original indictment and the first trial is attributable to motions made by the defendants, and was thus excusable. The government was ready to proceed after the mid-November, 1979 arrests.

On September 16, 1980 the first trial was aborted due to the illness of Mr. Gwinn, who represented appellant Middleton. In order not to rush the attorney, who might have required serious surgery and a prolonged recovery period, the court reset

the trial for January 12, 1981, and granted a continuance for the government as to all defendants because of judicial economy. The case was complex, with over 50 witnesses from several states and several countries; trial was expected to last at least two months and much of the same testimony was to be used against all defendants. United States vs. Edwards, 627 F.2d 460, 461 (D.C. Cit. 1980), cert. denied, 449 U.S. 872 (1980) (Speedy Trial Act was not violated when trial court granted a continuance because of the illness of counsel for one co-defendant.)

The second trial began April 20, 1981, rather than the date set by the court, this is, January 12, 1981. This delay was caused by (1) the necessity of processing the appellants by the Maine officials following the alleged importation of Bangor and (2) a plethora of motions proceding the April trial in Florida. These delays should not be

charged against the government.

3. Assertion of Right by Defendant. The third factor to be balanced under Barker is whether the defendant asserted his right to speedy trial. ("[T]he timeliness and vigor with which the right is asserted may be considered as an indication of whether a defendant was denied access to a speedy trial over his objection, or whether the issue was raised on appeal as afterthought." United States vs. Netterville, 553 F.2d 903, 914 (5th Cir. 1977), cert. denied, 434 U.S. 1009(1978). Shnurman's right to a speedy trial was asserted for the first time on December 28, 1980. This was more than a year after he was indicted and only after the necessary continuance because of other counsel's illness. He offers no explanation for the silence.

4. Prejudice. In Barker vs. Wingo, the Supreme Court delineated the interests sought to be protected by the Sixth Amend-

ment speedy trial guarantee. These are (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. The latter has been described as the most serious. 407 U.S. at 532; See also, Netterville, 553 F.2d 915.

A discussion of these interests follows seriatim:

(a) Shnurman was lawfully in custody from April, 1979 to May 5, 1980 on state charges. This was not oppressive pretrial incarceration nor was it in any way connected to or caused by the instant prosecution. See Jamerson vs. Estelle, 666 F.2d 241, 244 (5th Cir. 1982); United States vs. Hendricks, 661 F.2d 38, 43 (5th Cir. 1981). United States vs. Greer, 655 F.2d 51, 53 (5th Cir. 1981). After May 5, 1980, Shnurman was free on bond, except for a short

period of custody in Maine, which, of course, was due to his further criminal activities. Shnurman thus had in excess of one year of freedom in which to prepare for trial.

(b) The second interest is also not at issue here. Shnurman makes no allegations of anxiety or concern. His anxiety or concern did not prevent commission of the same crime in Maine in the interim.

(c) Shnurman has failed to demonstrate sufficient prejudice resulting from the post-indictment delay to obtain relief under Barker.

When all the factors are considered, the number of defendants, the complexity of the issues, and the failure of any appellant to meet the tests of Barker, we hold that the appellants' constitutional rights to a speedy trial were not violated.

IV. Shnurman's Ineffective Assistance of Counsel Claim

Appellant Shnurman alleges that his Sixth Amendment rights were violated be-

cause of the ineffective assistance of his trial counsel, Douglas Williams. His complaints about Williams are more directed at the post-trial work of that attorney, rather than to his effectiveness during the trial. Ineffective assistance of counsel claims are generally not considered on direct appeal because a district court normally has not had the opportunity to conduct an evidentiary hearing or to render findings of fact on such question. United States vs. Badolato, 701 F.2d 915, 925 (11th Cir. 1983); United States vs. Barham, 666 F.2d 521, 524 (11th Cir. 1982), cert. denied, 456 U.S. 947 (1982).

In Strickland vs. Washington, 104 S.Ct 2052 (1984), the court held in substance that a defendant seeking reversal because of an ineffectiveness claim must demonstrate that the attorney's shortcomings caused his conviction. Strickland articulates a two-pronged test for

determining whether a defendant received adequate assistance of counsel. The initial prong is competence. "As all the Federal Courts of Appelas have now held, the proper standard for attorney performance is that of reasonable assistance." Id. at 2064. A second prong was added: A defendant assailing a conviction must not only show imcompetent assistance but a "reasonably probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 2068. As the Court cautioned "Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude

that a particular act or omission of counsel was unreasonable." Id. at 2065. Judged by these standards Shnurman's claim falls far short of its mark.

Shnurman contends that his counsel's representation was deficient because Williams failed to represent him at the arraignment on the superseding indictment; Williams failed to seek instructions on withdrawal from the conspiracy and/or alibi; Williams faled to file proper post-trial motions; and Williams failed to renew the motions for speedy trial. Shnurman also complains that the trial court forced him to choose between his right to counsel of choice and his right to be out on bail before sentencing. We find none of these contentions persuasive.

No prejudice resulted from Williams' refusal to represent Shnurman at the arraignment on the superseding indictment. Shnurman had already entered a plea of not guilty at the arraignment on the original

indictment. The changes in the superseding indictment did not affect Shnurman as he admits. Any problems between Shnurman and Williams were quickly resolved thereafter. Williams reported to the court: "I am prepared to go to trial under whatever circumstances prevail."

Williams' failure to seek instructions on withdrawal from the conspiracy and/or alibi does not represent ineffective assistance. Shnurman was not entitled to those instructions. There was no evidence that Shnurman took any "affirmative action to defeat or disavow" the purpose of the conspiracy necessary to prove withdrawal. See United States vs. Diaz, 662 F.2d 713, 716 (11th Cir. 1981). The fact that Shnurman was involved in the Maine incident is enough to prove that he had not withdrawn from the conspiracy. Even though Shnurman was in jail when certain overt acts in furtherance of the conspiracy were committed, he can still be held

legally responsible for them. United States vs. Cuni, 689 F.2d 1353, 1356 (11th Cir. 1982); see generally, Pinkerton vs. United States, 328 U.S. 640 (1945).

Shnurman next objects that Williams failed to file proper post-trial motions for acquittal or new trial. However, he fails to state on what grounds such a motion should have been made or granted. Williams did adopt the Motions for Acquittal or New Trial filed by defendants Booth; these were denied. Even if Williams had filed nothing more than "boiler-plate" motions, the filing of these or other motions would have made no difference because there were no valid grounds on which to seek a new trial or post-verdict acquittal. Additionally, Shnurman's objection concerns post-trial matters. Such an allegation does not show that he was denied a fair trial. Thus, even if Shnurman were to demonstrate error in Williams' failure to file such motions,

he would still not be able to show he was prejudiced so as to deprive him of a fair trial.

Under the "totality of the circumstances," United States vs. Costa, 691 F.2d 1358, 1363 (11th Cir. 1982), it cannot be said that Williams rendered ineffective assistance. He filed pre-trial motions, lodging numerous objections, cross-examining the government's witnesses vigorously and by putting on a defense. "It is within this framework of totality of the circumstances that we judge the 'fundamental fairness' of the trial and ultimately counsel's effectiveness or ineffectiveness." Washington vs. Estelle, 648 F.2d 276, 279 (5th Cir.), cert. denied, 454 U.S. 899 (1981). "A court hearing an ineffectiveness claim must consider the totality of the evidence before the . . . jury." Strickland vs. Washington. 104 S.Ct. at 2069. The record affords overwhelming support for the verdicts.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-6121

D.C. Docket No. 79-379

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JACOB SHNURMAN,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

---

Before HENDERSON and CLARK, Circuit Judges, and ATKINS*, District Judge.

JUDGMENT

These causes came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and were argued by counsel:

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgments of conviction of the

said District Court in these causes be and the same are hereby AFFIRMED.

---

*Honorable C. Clyde Atkins, U.S. District Judge for the Southern District of Florida sitting by designation.

Entered: November 8, 1984
For the Court: Spencer D. Mercer, Clerk

By: /s/ Deputy Clerk

Issued as Mandate: January 15, 1985

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-1621

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JACOB SNURMAN,

Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Florida

---

ON PETITION FOR REHEARING
(December 21, 1984)

Before HENDERSON and CLARK, Circuit Judges; and ATKINS*, District Judge.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above-entitled cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/
United States Circuit Judge

*Hon. C. Clyde Atkins, Senior District Judge, for the Southern District of Miami, sitting by designation.

APPENDIX C

21 U.S.C. §841(a) Prohibited Acts A

(a) Unlawful acts. Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally--

> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, of dispense a controlled substance.

21 U.S.C. §846 Attempt and Conspiracy

Any person who attempts or conspires to commit any offense defined in this title is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

21 U.S.C. §952(a) Importation of Controlled Substances

(1) Controlled substances in Schedule I or II and narcotic drugs in schedule III, IV or V; exceptions. It shall be unlawful to import into customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of title II, or any narcotic drug in schedule III, IV or V of title II, . . .

21 U.S.C. §960(1) Prohibited acts A

(a) Unlawful acts. Any person who--

(1) contrary to section 1002, 1003, or 1007 [21 U.S.C.S. §§952, 953, 971], knowingly or intentionally imports or exports a controlled substance.

APPENDIX D

28 U.S.C. §1254(1)

Courts of appeals; certiorari, appeal, certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

APPENDIX E

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any

criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.